

ARGUMENTS/REMARKS:

Reconsideration of the above-identified application is respectfully requested.

Initially, Applicant acknowledges with appreciation the telephonic discussion of January 26, 2007 with Examiner Castellano, regarding the status of this application.

Page 2, second paragraph of the Official Action confirms the withdrawal of claims 10 and 33-38 as non-elected invention in accord with the Restriction requirement of mailed March 26, 2006. Applicant's acknowledge same intending to file a Divisional Application pertaining thereto.

Page 2, third paragraph of the Official Action rejects claims 1, 2 and 5-8 under 35 USC 102(b) as anticipated by US Patent 4,852,759 to Williams et al.

Williams discloses a rectilinear painter's tray having a flat rectangular bottom with outwardly angled rectilinear walls with an adjacent pair of walls joined to form an indented spout. A securement ring is arranged to secure a paint can to the bottom of the tray, the securement ring being spaced from the spout and containing an opening to direct spilled paint toward the spout. In accord with the rejection, Applicant has amended claim 1 of the present application to be inclusive of the limitations of claims 2 and 3 of the invention as originally filed. It is submitted that Williams does not in any way disclose a container having a retainer wall at its perimeter comprised of spaced inner and outer walls.

Applicant's incorporation of the spaced double walled outer retainer wall, comprises an important functional improvement to the tray of Williams. Such functional improvement is recited at page 4, line 23 through page 5 of the instant specification wherein the beneficial functionality of the spaced double walled construction is recited as; absorbing shock from bumping, etc.; as resisting

sliding movement on a painter's drop cloth when the outer wall ends slightly below the plain of the generally flat bottom surface of the receptacle; and, providing grip enhancement when grasping the paint can mounted tray for movement. Williams does not disclose either a spaced double walled peripheral construction or any beneficial functional improvement that might be attained thereby. Accordingly, it is submitted that the current amendment to claim 1 incorporating the limitations of claims 2 and 3 has avoided the rejection under 35 USC 102(b).

Page 2, fourth paragraph through page 3 third paragraph of the rejects claims 9, 13 and 27-31 under 35 USC 103(a) over Williams. Each of the claims rejected in this paragraph were originally filed as ultimately dependent upon original claim 1 of the application as filed, without inclusion of the double walled limitations of receptacle as recited in claim 3. It is submitted that the present amendment incorporating the limitations of claim 3 into claim 1, avoids the rejection of each of these claims in that there is no disclosure of a spaced double walled construction in Williams nor any hint of a functionality which might be achieved therefrom by incorporation thereof. Accordingly, it is submitted that claims 9, 13 and 27-31 are not obvious in view of Williams to one of ordinary skill in the art.

Page 3, fourth paragraph of the Official Action rejects claim 11 under 35 USC 103(a) over Williams in view of US Patent 6,971,420 to Demitry. Demitry discloses an essentially flat painter's mat which is attachable to the bottom of a metal paint can by magnetic and the like means. The mat is generally flat disk shaped and is formed from an absorptive material. A paint can is placed thereon and apparently any drips, etc., that may occur from the paint can are absorbed by the mat. In a preferred embodiment, the generally circular mat comprises a generally rectilinear extension from the periphery thereof, on which a paint brush may be rested. Demitry is apparently cited to show a rounded shape with a rectilinear end

to enable a paint brush to be rested thereon.

Claim 11 of the application as filed was directly dependent upon original claim 2 of the application. With the amendment of claim 1 to incorporate the limitations of claim 3, the rejection appears to have been avoided through a failure of either Demitry or Williams to hint at or otherwise disclose a spaced double walled construction. Further, it is pointed out that the flat mat arrangement of Demitry has no obvious combination with Williams, being merely a mat for absorbing paint drips from the edge of a paint can, as distinct from being a receptacle for spilled paint which enables convenient useful recovery thereof.

Applicant directs the USPTO's attention to the present Specification particularly page 5, line 12 through page 2, line 2. Therein the shape of Applicant's tray as recited in claim 11 of the present application, particularly with the paint can securing means arranged near the curved end of the tray, is disclosed as having a functional utility, particularly that the rounded end of the receptacle enables placement of the tray in close proximity to a wall or the like while also providing a unique leveraging advantage for grasping and holding the tray in the course of normal movement of the painter from place to place during painting efforts. Specifically, the present invention provides a shape which sets the offset of the weight of the mounted paint close to the perimeter of the rounded shape, which enables one to conveniently use a single hand grasp to support the underside of the tray with fingers extending under the gravimetric weight of the mass of the mounted paint can, with the thumb locked over the retainer wall. The rounded shape of the tray proximate the mounted paint can makes such thumb grasp convenient and sure through multiple positions. The upright retainer walls provide surety to the thumb grasp; the rounded nature of the top margin of the double retainer wall makes the grasp a comfortable engagement against the inner surface of the thumb; and, the bottom edge of the outer wall engages the palm to

provide resistance to slipping from the user's grasp. Such improved functionality is neither disclosed nor apparent from Williams, and appears to be in conflict with Demitry.

In view thereof it is submitted the combination of Demitry with Williams is not apparent, but comprises a melding of contradictory teachings which have no independent complimentary meaning except when seen through the lens of disclosure of the present application. Accordingly, it is submitted that in view of the amendments to claim 1, the rejection of claim 11 under 35 USC 103(a) is both avoided and not obvious to one of ordinary skill in the art.

Page 3, last paragraph of the Official Action rejects claims 3, 4 and 32 under 35 USC 103(a) as obvious over Williams in view of Mitchell. Claim 1 has been amended to contain the limitations of claims 2 and 3. Claim 32 has been amended to contain further limitation to the recitation regarding double walled construction of the tray of the invention.

Mitchell discloses a combination lid and spill tray device arranged to be used with the shipping and storing of industrial sized salvage drums containing environmentally contaminating fluids. The device is circular shaped and is presented as a lid which can be connected to the top and/or bottom of an industrial drum, the lid comprising a skirt which surrounds the vertical side wall of the drum. The lid is formed from fuzing together an upper and lower circular wall at predetermined locations, to form a central hollow comprising arcuate channels for holding liquids. When placed on the top of a drum it appears as a lid with a skirt that can be secured to the drum by various conventional means, with the perimeter of the device containing a gasket receiving groove which when containing a gasket, seals the lid to the drum. When the lid of Mitchell is arranged on the sealed base of the drum, with the skirt facing upwardly without a gasket in the gasket

receiving groove, it apparently functions as a receiving tray. Though it is unclear to Applicants, apparently when the device is so upwardly arranged, liquid leaking from the bottom of the drum will be collecting in the lid and spill over the inner wall into the gasket retaining groove. Such functionality apparently enables convenient visual inspection of stored drums for bottom leakage without movement of the drum and reduces the problem of finding a leaking drum when a plurality of stored drums are arranged in a common area.

Applicant is perplexed by how Mitchell is seen by the USPTO as comprising prior art which would be apparent to one of ordinary skill in the art leading to combining same with Williams to provide an assertion of obviousness to one of ordinary skill in the art. Though on a very broad scale both have utility as a liquid collecting tray, Mitchell is concerned with difficult to visibly see container leaks from hidden breaches in the bottom of a difficult to handle large storage container; while Williams is concerned with recovering and retaining liquids which visibly spill over the top of a small portable container. Mitchell doesn't profess to retain all the leaking liquid, but merely to provide a means of viewing whether or not a small leak is or has occurred, a problem which has little if any application to the present claimed device, wherein any such leak would be immediately apparent. Williams primary utility is as a means to contain spilled liquid. From the outset, it would appear that the combination of Mitchell with Williams would not be an obvious combination but a combination of disparate references, the only hint of application to Williams being the hindsight knowledge of the present disclosure.

Williams does not disclose a desirable use of a spaced double walled construction in his patent, nor even a hint that such may be applicable to his invention. In contrast, Mitchell uses a spaced double wall to gain visibility of liquid flowing from an unseen location to another holding area. The present invention uses a

spaced double wall with a joined top margin to obtain stability of a paint spill retaining tray from accidental movement and convenience in grasping. These facts strongly support Applicant's position that the citation of Mitchell in combination with Williams is a hindsight result, not a normal result that would be apparent to one of ordinary skill in the art.

Applicant has incorporated the limitations of claims 2 and 3 into independent claim 1 of the present application. Original claim 32 comprised the limitations of claim 3 when filed and has been further amended in this response to include further clarification terminology comprised in the specification. Particularly, claim 32 has been amended to additionally include the terminology of page 6, line 7 pertaining to the top surface "joining the walls".

The limitations of claim 3 provide for a ..."double-walled arrangement having spaced inner and outer walls connected about along top margins thereof". The recitation of claim 1 as amended, particularly the specification at page 6, line 7 reciting the top surface joining of the walls and the illustrated embodiments of the drawings (see FIG 6), makes it clear that newly amended claims 1 and 32 comprise no intention to provide a fluid storage area between the double walls and no means for doing same.

Applicant submits that without knowledge of the present application, it is extraordinary that a person of ordinary skill in the art, having the disclosure of Mitchell and Williams side by side, would contemplate Mitchell as having any pertinent contribution to a painter's tray, much more the invention of the present application. It is pointed out that cutting through all the complexity of Mitchell, when Mitchell is viewed as a lid it is merely such. When Mitchell is viewed as a collection tray it presents a second pan surrounding a first pan in which a container sits. The first pan collects leakage from a container (drum)

sitting therein, and when the first pan fills as to overflow its containing wall, the liquid flows into the second pan and is retained therein by its retainer wall. The overflow between the two walls is easily visible through ordinary inspection means for appropriate attention to the situation. The present invention comprises a single pan. When it overflows the upper margin of the inner wall wherein the double walls are connected, it fails. The outer wall of the spaced double wall limitation of the claims of the present application does not receive fluid from the tray and has no fluid holding function. The function of the outer wall in the present application is to temper the effect of events occurring on the surface it rests on, particularly absorbing the shock of unintended blows which might shake fluid contained in the paint can mounted thereon, resistance to unintended sliding movement of the tray and to provide a convenient carrying means. None of these functional elements are disclosed or otherwise hinted at in the Mitchell disclosure.

In accord with the foregoing, it is submitted that any pertinency of Mitchell to Williams is not apparent to one of ordinary skill in the art, but appears to be a product of hindsight application in view of knowledge of the present application. Even assuming a pertinency is independently ascertained, the pertinency at most is a suggestion of a double walled container which collects overflow from a first containing hollow to a second containing hollow, an arrangement not a part of the present claimed invention. In view thereof, it is submitted that the rejection of claims 3, 4 and 32 under 35 USC 103(a) as obvious over Williams in view of Mitchell is unwarranted under the meaning of 35 USC 103.

Page 4, paragraph 2 of the Official Action rejects claims 14-21, 24 and 25 as being obvious in view of US Patent 4,240,568 to Pool. Applicant submits that the validity of claims 14-21, 24 and 25 depends upon the validity of the independent claim from they depend, e.g. newly amended claim 1, not the disk device contained

as a component of the kit per se. In accord with the claim structure presented in this application, the invention comprises a kit containing a particular receptacle defined by newly amended claim 1. The kit may contain the receptacle alone in its basic form as defined in amended claim 1, or in its subsequent forms as defined within claims ultimately dependant upon claim 1. Claim 14-21, 24 and 25 merely add various further devices to the content of the kit, broadly including any disk type slot shield. Such claiming technique has long been accepted by the USPTO and is akin to common dependant claiming techniques wherein modifications of an inventive device are dependently claimed as preferred embodiments.

Page 4, paragraph 4 of the Official action asserts that claims 12, 22, 23 and 26 have been objected to as being dependent upon a rejected claim. Claim 12 is dependant upon original claim 3; claim 22 is ultimately dependent upon claim 3 through claims 18, 15 and 14; claim 23 is ultimately dependent upon claim 3 through claim 22; and claim 26 is ultimately dependant upon claim 3 through claims 14, 24 and 25. In accord with the foregoing, Applicant has amended the dependency of each of the foregoing dependant claims to be ultimately dependent upon newly amended claim 1. It is submitted that with the amendment to claim 1, together with the arguments presented in regard to allowance thereof over the cited prior art, that the claimed invention is in condition for allowance and action toward that end is respectfully requested.

CONCLUSION:

In view of the foregoing it is submitted that the rejection of claims 1-9, 11, 13-21, 24, 25 and 27-32 over the cited references, has been overcome and that the claims as now amended are in condition for allowance.

Respectfully submitted,

CROSSETTA & ASSOCIATES



William J. Crossetta, Jr.
Reg. No. 25790
4135 David Court
Williamsville, New York 14221

Tel: (716) 852-3935
Fax: (716) 852-3935

WJC/lmc

Dated: February 8, 2007